

REMARKS

Claims 1-24 are pending in the instant application while claims 1-24 are subject to a second restriction requirement. Claims 1, 2, 3, 5, 7, 9, and 18 have been amended, while claim 25 is newly added. Claims 1-25 remain for consideration upon entry of the present amendment and consideration of a provisional election with traverse. No new matter has been added.

The Examiner notes that the recited intended purpose of the bag of claims 9-15, 21 does not include a food item having a top and a base and that consequently, a bag with an intended use for limiting heat loss for a food item in the bag (claims 9-15, 21) and the method of inserting a food item with a top and a base (claims 18-20, 22-24) are now distinct inventions. Thus, the Examiner holds that in light of the amendment and for the reasons set forth below a second restriction requirement is required.

It is respectfully pointed out that claims 9-15, and 21 have been amended to include a "food item having a top and a base", thus rendering moot the reason set forth above for a second restriction requirement.

Further, the Examiner requires restriction to one of the following inventions under 35 U.S.C. §121:

- I. Claims 1-8, 16, 17, drawn to a container with a radiant barrier classified in class 220, subclass 582.2.
- II. Claims 9-15, 21, drawn to a bag with radiant and thermal barriers, classified in class 383, subclass 109.
- III. Claims 18-20, 22-24, drawn to a method of inserting a food item having a top and base into a bag, classified in class 426, subclass 392.

The Examiner alleges that the inventions are distinct, each from the other because: invention II has separate utility such as a bag containing biomedical

FOM-0001

specimens (i.e. neither food nor a top/base configuration). See MPEP § 806.05(d); the apparatus of group I can be used to practice another and materially different process such as packaging non-edible items, such as medical instruments; and the apparatus of group II can be used to practice another and materially different process such as containing non-edible items without a top and base, such as biomedical specimens.

Applicants provisionally elect group II, claims 9-15, 21, drawn to a bag with radiant and thermal barriers, classified in class 383, subclass 109, with traverse, for further prosecution on the merits.

Applicants respectfully submit that claim 1 has been amended to be generic to independent claims 9 and 18. Further, pursuant to MPEP §806.05(d), care must be taken to determine if the subcombinations are generically claimed. Where subcombinations as disclosed and claimed are both (a) species under a claimed genus and (b) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to related inventions. If restriction is improper under either practice, it should not be required (MPEP § 806.04(b)).

Accordingly, it is respectfully requested that the restriction requirement be withdrawn and proceed with further prosecution of claims 1-25.

CONCLUSION

In view of the above-presented amendments and accompanying remarks, it is respectfully submitted that all of the pending claims, Claims 1-25 are patentable over the prior art and allowance is respectfully requested.

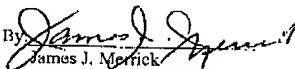
If, however, any issues remain, the Examiner is cordially invited to contact the undersigned so that such issues may be promptly resolved.

If there are any charges with respect to this amendment, or otherwise, please charge them to Deposit Account No. 06-1130 maintained by applicants' attorneys.

Respectfully submitted,

BORIS E. GOLDMAN ET AL.

CANTOR COLBURN LLP
Applicants' Attorneys

By 
James J. Merrick
Registration No. 43,801
Customer No. 23413

Date: June 10, 2004
Address: 55 Griffin Road South, Bloomfield, CT 06002
Telephone: (860) 286-2929

PCN1-0001